

Decision **PROPOSED DECISION OF ALJ YIP-KIKUGAWA** (Mailed 10/15/2013)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Approval of Modifications to its SmartMeter™ Program and Increased Revenue Requirements to Recover the Costs of the Modifications (U39M).

Application 11-03-014  
(Filed March 24, 2011)

And Related Matters.

Application 11-03-015  
Application 11-07-020

**DECISION GRANTING INTERVENOR COMPENSATION TO  
UTILITY CONSUMER'S ACTION NETWORK**

<b>Claimant: Utility Consumers' Action Network</b>	<b>For contribution to Decision 12-04-019</b>
<b>Claimed (\$): \$30,645.20</b>	<b>Awarded (\$): \$19,966.00 (reduced 35%)</b>
<b>Assigned Commissioner: Michael R. Peevey</b>	<b>Assigned ALJ: Amy Yip-Kikugawa</b>

**PART I: PROCEDURAL ISSUES**

<b>A. Brief Description of Decision:</b>	This decision grants the request of the Utility Consumers' Action Network to modify Decision (D.) 07-04-043, which adopted San Diego Gas & Electric Company's Advanced Metering Infrastructure Project. D.07-04-043 is modified to include an option for residential customers who do not wish to have a wireless smart meter installed at their location.
--	--

**B. Claimant must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:**

	As Stated by Claimant	CPUC Verified
<b>Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):</b>		
1. Date of Prehearing Conference:	May 6, 2011	Correct
2. Other Specified Date for NOI:		
3. Date NOI Filed:	June 1, 2011	Correct
4. Was the NOI timely filed?		Yes
<b>Showing of customer or customer-related status (§ 1802(b)):</b>		
5. Based on ALJ ruling issued in proceeding number:		
6. Date of ALJ ruling:		
7. Based on another CPUC determination:		D.10-05-013
8. Has the Claimant demonstrated customer or customer-related status?		Yes
<b>Showing of “significant financial hardship” (§ 1802(g)):</b>		
9. Based on ALJ ruling issued in proceeding number:	D.10-05-013	Correct
10. Date of ALJ ruling:	May 10, 2010	Correct
11. Based on another CPUC determination:		
12. Has the Claimant demonstrated significant financial hardship?		Yes
<b>Timely request for compensation (§ 1804(c)):</b>		
13. Identify Final Decision:	D.12-04-019	Correct
14. Date of Issuance of Final Decision:	April 24, 2012	Correct
15. File date of compensation request:	July 18, 2012	Correct
16. Was the request for compensation timely?		No

**C. Additional Comments on Part I:**

#	Claimant	CPUC	Comment
1	UCAN		See UCAN’s Motion to Late-File Intervenor Compensation Request for Contributions to Decision 12-04-019.
		X	Utility Consumers’ Action Network’s (UCAN) Motion to Late-File Intervenor Compensation Request for Contributions to Decision (D.) 12-04-019 is granted.

**PART II: SUBSTANTIAL CONTRIBUTION****A. Claimant's description of its contribution to the final decision** (*see* § 1802(i), § 1803(a) & D.98-04-059):

<b>Contribution</b>	<b>Specific References to Claimant's Presentations and to Decision (Provided by Claimant)</b>	<b>Showing Accepted by CPUC</b>
<p>1. Intervenor UCAN filed an Application for Modification of Decision 07-04-043 pursuant to Rules 2.1 and 16.4 of the Commission's Rules of Practice and Procedure. D.07-04-043 approved a settlement between San Diego &amp; Electric Gas Company (SDG&amp;E), the Division of Ratepayer Advocates (DRA) and UCAN allowing \$573 million in funding for SDG&amp;E's proposed Advanced Metering Infrastructure (AMI) Project. UCAN requests that the Commission modify D.07-04-043 to compel SDG&amp;E to develop a proposal or proposals by which residential SDG&amp;E customers may choose to opt-out of the mandatory use of smart meters at their residences.</p> <p>UCAN Application at 1.</p>	<p>This decision grants the request of the UCAN to modify D.07-04-043, which adopted San SDG&amp;E's AMI Project. D.07-04-043 is modified to include an option for residential customers who do not wish to have a wireless smart meter installed at their location. The opt-out option shall be an analog electric and/or gas meter.</p> <p>D.12-04-019 at 2.</p>	<p>Yes</p>
<p>2. It would appear that SDG&amp;E opposes the offering of an analog meter to customers. (Proposal, p. 16) SDG&amp;E cites a concern that customers with analog meters will attempt to by-pass future mandatory tariffs. UCAN does not agree. In fact, recently PG&amp;E acknowledged that its customers deserve the choice of an analog meter. (A.11-03-014; PG&amp;E Comments on Proposed Decision of Commissioner Peevey, December 19, 2011, at 1) UCAN agrees that the choice of an analog meter will be desired by many customers and should be accommodated at the current time. UCAN also concurs that a digital meter with no radio installed is an appropriate option to offer customers.</p> <p>UCAN Comments on SDG&amp;E Proposal</p>	<p>UCAN agrees with SDG&amp;E that a digital meter with no radio installed is an appropriate option to offer residential customers. However, it believes that an analog meter opt-out option could be accommodated at this time. UCAN maintains that SDG&amp;E's concerns about customers using analog meters to avoid mandatory tariffs are premature, as there are currently no mandatory real-time pricing tariffs in place. Additionally, it states that in the future, the opt-out fees could be adjusted to discourage customers from selecting the option to avoid these tariffs. UCAN further states that if an analog option is adopted for PG&amp;E customers, that option should also be available for SDG&amp;E customers.</p> <p>D.12-04-012 at 8-9.</p>	<p>Yes</p>

at 2.		
<p>3. SDG&amp;E's concerns about customers using analog meters to avoid mandatory tariffs are premature and ill-conceived. First, there are currently no mandatory real-time pricing tariffs that are planned for implementation. Second, the additional costs of this opt-out program would likely eclipse any costs imposed by a mandatory real-time pricing regime. Moreover, the opt-out tariffs can be adjusted so as to discourage customers from using the analog meter option as a cost-avoidance strategy.</p> <p>UCAN Comments on SDG&amp;E Proposal at 3-4.</p>	<p>Nonetheless, as noted by UCAN, there are currently no mandatory time of use tariffs for residential customers. As such, we agree that an analog meter opt-out option could be accommodated at this time.</p> <p>D.12-04-012 at 15-16.</p>	Yes
<p>4. UCAN does object to SDG&amp;E's proposal to offer a wired smart meter to customers. It should be rejected at the current time as overly expensive and a bad choice for customers. When Itron develops a system by which snap reads can be offered then such as option might be a viable one to offer customers. But during the interim period, UCAN recommends offering only the two options: analog and digital meters. The Wired Option proposed by SDG&amp;E should be rejected.</p> <p>UCAN Comments on SDG&amp;E Proposal at 3-4.</p>	<p>UCAN opposes the wired smart meter opt-out option, as it considers such an option to be overly expensive and a bad choice for customers.</p> <p>D.12-04-012 at 9.</p>	Yes
<p>5. UCAN's experts were unable to determine the reasonableness of the costs estimated by SDG&amp;E. As presented by SDG&amp;E, UCAN's experts could not determine whether or how the estimates were overstated. And because of the very estimated nature of the costs, rather than spend much resources drilling down into SDG&amp;E's estimates, UCAN supports a cost-recovery mechanism that does not require pre-approval of opt-out related costs incurred by SDG&amp;E.</p>	<p>However, as evidenced by the cost adjustments made in response to UCAN and DRA's comments, we agree with UCAN and DRA that further consideration of SDG&amp;E's cost estimates is warranted. Consequently, the costs associated with offering the analog opt-out option shall be considered in a separate phase of this proceeding. Further, this phase shall consider whether to allow the opt-out option to be exercised by local communities and governments and, if so, whether the costs for a community exercising the opt-out option would differ</p>	Yes

UCAN Comments on SDG&E Proposal at 7.	from an individual customer exercising the opt-out option.  D.12-04-012 at 17-18.	
6. While UCAN concurs with the Creation of the balancing accounts, it does not agree that all customers should be assessed the costs contained in these balancing accounts. UCAN joins with DRA and TURN in holding customers who opt-out mostly accountable for the costs of that choice. Other residential customers should not subsidize the cost of this opt-out election by a select group of customers.  UCAN Comments on SDG&E Proposal at 8-9.	Therefore, any customer electing the opt-out option is electing to not have the standard meter. As such, costs associated with providing an opt-out option should be the responsibility of those customers opting-out.  D.12-04-12 at 18.	Yes

**B. Duplication of Effort (§§ 1801.3(f) & 1802.5):**

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?</b>	Yes	Correct
<b>b. Were there other parties to the proceeding with positions similar to the Claimant's?</b>	Yes	Correct
<b>c. Names of other parties (if applicable): Division of Ratepayer Advocates (DRA) and the Utility Reform Network (TURN)</b>		Correct
<b>d. Claimant's description of how Claimant coordinated with DRA and other parties to avoid duplication or of how Claimant's participation supplemented, complemented, or contributed to that of another party:</b>  UCAN worked with DRA and TURN via teleconference and electronic correspondence to develop a coordinated strategy and ensure that the parties did not engage in duplicative work.		We make no reductions to UCAN's claim for unnecessary duplication of effort with other parties.

**PART III: REASONABLENESS OF REQUESTED COMPENSATION****A. General Claim of Reasonableness (§§ 1801 & 1806):**

<b>a. Explanation by Claimant of how the cost of Claimant's participation bore a reasonable relationship with benefits realized through participation</b>	<b>CPUC Verified</b>
SDG&E ratepayers have directly benefitted from UCAN's participation. The primary goal of UCAN's application – the expansion of ratepayer rights through	It is reasonable to find that the costs of UCAN's

the inclusion of a smart meter opt-out option – was adopted, as well as many of the UCAN’s specific proposals. The moderate cost of UCAN’s participation in this proceeding is greatly outweighed by the value of the expanded ratepayer rights gained as a result of UCAN’s application and other participation.	participation bears a reasonable relationship with future benefits to customers which will exceed the amount awarded to UCAN by today’s decision. We find that UCAN’s participation in this proceeding will have direct benefits to SDG&E’s customers.
<b>b. Reasonableness of Hours Claimed.</b>  Given the significant expansion of ratepayer rights and protections gained as a result of the Commission’s approval of UCAN’s AMI opt-out proposal, the limited hours claimed by UCAN are reasonable.	UCAN’s request is reasonable and commensurate with the work it performed.
<b>c. Allocation of Hours by Issue</b>  UCAN allocated hours by two issues: A. General Preparation and Discovery B. AMI Opt Out	UCAN has satisfied the requirement to provide a breakdown of its hours by major issue in accordance with the guidance provided in D.98-04-059.

**B. Specific Claim\*:**

CLAIMED						CPUC AWARD			
ATTORNEY, EXPERT AND ADVOCATE FEES									
Item	Year	Hours	Rate	Basis for Rate	Total	Year	Hours	Rate	Total
Michael Shames	2011	36	\$535	Comment 1	\$19,260	3-20-11 to 10-5-11	32.5	\$330	\$10,725
Michael Shames	2012	14.4	\$535	Comment 1	\$7,704	10-5-11 to 4-3-12	17.9	\$365	\$6,533.50
Jeff Nahigian	2012	3.5	190	D.10-07-040	\$665	2012	3.5	\$190	\$665
	Subtotal:				\$27,629	Subtotal:			\$17,923.50
OTHER FEES									
Item	Year	Hours	Rate	Basis for Rate	Total	Year	Hours	Rate	Total
Shames - Travel	2011	9.5	\$535	Comment 1	\$2,541.25	2011	9.5	\$165 <sup>1</sup>	\$1,567.50
	Subtotal:				\$2,541.25	Subtotal:			\$1,567.50

<sup>1</sup> Costs claimed for travel should be billed at ½ of the individual’s normal hourly rate.

INTERVENOR COMPENSATION CLAIM PREPARATION **										
Item	Year	Hours	Rate	Basis for Rate	Total	Year	Hours	Rate	Total	
David Peffer	2012	4.75	\$100	Comment 2	\$475.00	2012	4.75	\$100	\$475.00	
	Subtotal:				\$475.00	Subtotal:				\$475.00
TOTAL REQUEST :					\$30,645.25	TOTAL AWARD :				\$19,966.00
<p>* We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant’s records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p>										
<p>** Reasonable claim preparation time typically compensated at ½ of preparer’s normal hourly rate (the same applies to the travel time).</p>										

### C. CPUC Disallowances & Adjustments:

#	Reason
Hourly Rate for Michael Shames	<p>UCAN requests a merit-based hourly rate increase for Michael Shames (Shames) from his last-adopted rate of \$330 to a new rate of \$535. CPUC's search of the State Bar of California's database indicates that Shames was admitted to the BAR in June of 1986 (#108582). According to UCAN, Shames has over 25 years of experience advocating before the CPUC. During that time, Shames was an inactive member of the State Bar of California from January 1, 1988 until he returned to active status on October 5, 2011.</p> <p>UCAN's request for an increase of the \$330/per hour to \$535/per hour for Shames is denied. Shames' hourly rate of \$330 was adopted in D.11-03-028 on March 10, 2011 and reaffirmed as recently as D.11-10-011. UCAN does not offer any justification for requesting an increase of \$205 per hour in the same year in which the last adopted rate was approved twice by the Commission.</p> <p>UCAN points to D.08-04-010 as the basis for the requested rate increase. UCAN claims that Shames' experience as a lead advocate or litigator in CPUC proceedings for over 25 years is comparable to lead attorneys with 20+ experience, such as Michel Florio and Robert Gnaizda. D.08-04-010 held, in relevant part:</p> <p>[A]n intervenor representative who has historically sought rates at the low end of an applicable rate range may request an increase within that range if the representative can clearly</p>

	<p>demonstrate in the compensation request that the representative's previously adopted rate is significantly less than that of close peers (those with closely comparable training and experience and performing closely similar services). Such requests will be judged on a case-by-case basis, but at a minimum must show the previously adopted rate of the peer(s), and must include a detailed description of the work involved, to the degree that a comparison readily can be made. D.08-04-010 at 9.</p> <p>The UCAN request references Mr. Florio (Florio) and Mr. Gnaizda (Gnaizda) as close peers to Shames. While the number of years that Shames has appeared before the CPUC is similar to both Florio and Gnaizda, Shames was performing work as an advocate between 1998 and 2011 while Florio and Gnaizda were performing work as attorneys. It is not accurate to claim that Shames did the same work warranting a similar rate as adopted for Florio and Gnaizda.</p> <p>While UCAN's request for \$535 per hour for Shames' work in this proceeding is denied, we find it appropriate to increase the rate adopted in D. 11-03-028 for the hours worked after October 5, 2011 when Shames became an active member of the California Bar, in recognition of Shames' credentials and the over 25 years in proceedings before the CPUC. The current rate of \$330 is hereby increased by 10% (two steps plus COLA adjustment increase or \$33 per hour. We adopt a rate of \$365 and hour for Michael Shames.</p>

#### PART IV: OPPOSITIONS AND COMMENTS

<b>A. Opposition: Did any party oppose the claim?</b>	No
<b>B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(c)(6)) (Y/N)?</b>	No

If not:



<b>Party</b>	<b>Comment</b>	<b>CPUC Disposition</b>
UCAN	Costs associated with UCAN's travel should not have been disallowed since they are over 120 miles.	Accepts this statement; has adjusted the claim to reflect compensation for travel.

### **FINDINGS OF FACT**

1. The Utility Consumers' Action Network has made a substantial contribution to D.12-04-019.
2. The Utility Consumers' Action Network requested hourly rates for representatives, as adjusted herein, are comparable to market rates paid to experts, advocates and attorneys having comparable training and experience and offering similar services.
3. The total of reasonable compensation is \$19,966.00.

### **CONCLUSION OF LAW**

1. The Utility Consumers' Action Network request for acceptance of this late-filed Intervenor Compensation Claim is reasonable and as such, we grant the request.
2. The Utility Consumers' Action Network claim, with the adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

### **ORDER**

1. The Utility Consumers' Action Network is awarded \$19,966.00
2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company shall pay the Utility Consumers' Action Network the total award. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning October 1, 2012, the 75<sup>th</sup> day after the filing of the Utility Consumers' Action Network's request, and continuing until full payment is made.
3. The comment period for today's decision was not waived.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX****Compensation Decision Summary Information**

<b>Compensation Decision:</b>		<b>Modifies Decision?</b> No
<b>Contribution Decision(s):</b>	D1204019	
<b>Proceeding(s):</b>	A1103014, A1103015, A1107020	
<b>Author:</b>	ALJ Amy Yip-Kikugawa	
<b>Payer(s):</b>	San Diego Gas & Electric Company	

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier</b>	<b>Reason Change/Disallowance</b>
Utility Consumers' Action Network	07-18-12	\$30,645.20	\$19,966.00	No	Adjusted hourly rate.

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Michael	Shames	Advocate/Attorney	Utility Consumers' Action Network	\$535	2011	\$330
Michael	Shames	Attorney	Utility Consumers' Action Network	\$535	2012	\$365
Jeff	Nahigian	Expert	Utility Consumers' Action Network	\$190	2012	\$190
David	Peffer	Attorney	Utility Consumers' Action Network	\$200	2012	\$200

**(END OF APPENDIX)**